

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9494 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 Yes
2 to 5 No

VR PANDYA

Versus

STATE OF GUJARAT

Appearance:

MRS KETTY A MEHTA for Petitioner

MR MUKESH PATEL for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 13/03/97

ORAL JUDGEMENT

The petition comes up for hearing on Civil Application No. 5565 of 1996 in Special Civil Application No. 9494 of 1995 moved by the State of Gujarat for vacating ad-interim relief passed in Special Civil Application vide orders dated 28.11.1995.

2. Learned counsel for the applicant State urged at the outset that since this petition is similar to Special Civil Application No. 7158 of 1995 and SCA No. 7933 of 1995 raising identical issues and the said Special Civil Applications have been decided by this court on 24.6.1995 rejecting the petitions the Special Civil Application itself is liable to be rejected. Therefore, there is no ground for continuing the interim order passed by this court. As the matter required to be viewed in light of the said Special Civil Application raising identical issues the Special Civil Application itself has been heard with the consent of the parties.

3. The brief facts for the present purpose may be noticed. The petitioner is a member of Scheduled Caste. He after having passed the Lower Revenue Qualifying Examination in October 1982 was promoted as Deputy Mamlatdar in January, 1983 and thereafter having passed the Higher Revenue Qualifying Examination was promoted as Mamlatdar on 27.9.1990 on the basis of Roster applicable to Scheduled Caste employees. As the promotion to the post of Mamlatdar was from the cadre of Deputy Mamlatdars there was some dispute about the seniority list of the Deputy Mamlatdars and the deem date of promotion to that cadre which was made subject of Special Civil Application No. 2224 of 1993. The said Special Civil Application No. 2224 of 1993 along with Special Civil Application No. 2213 of 1993 came to be decided on 26.10.1994. By the said decision the respondents were directed to prepare the seniority list of Dy. Mamlatdars afresh for the purpose of giving promotion to the post of Mamlatdar in accordance with the observations made in the judgement in light of the earlier judgements and rules and the required HRQE rules.

4. After the above directions were given by this court on 26.10.1994 the Government published the impugned list at Annexure-A dated 9.3.1995 of the persons who had passed Lower Revenue Qualifying Examinations and Higher Revenue Qualifying Examination. In the said seniority list dated 9.3.1995 the petitioner has been shown at serial No. 524 roster point available for Scheduled Caste.

5. So far as contention raised to the validity of the final seniority list dated 9.3.1995 is concerned two pronged attack was made. Firstly that the seniority list has been finalised without affording an opportunity of hearing and secondly that on merit seniority list in question suffers from vital defects as to proper assignment of seniority amongst the persons who have

passed the Lower Revenue Qualifying Examination and Higher Revenue Qualifying Examinations in time vis-a-vis those who have passed the two examinations beyond the prescribed time referred to as 'late latifs.' These two issues are raised in this petition also and are common to such contentions raised in Special Civil Application Nos. 7158 of 1994 and 7933 of 1995. Both the contentions have been negatived by this court in its decision dated 24.6.1996. The court held that opportunity was afforded to all the affected persons by inviting objections to the provisional seniority list and also found that all the candidates upto serial No. 1945 of the list have passed Lower Revenue Qualifying Examinations and Higher Revenue Qualifying Examination within the prescribed period and chances and therefore their placement in context of the HRQE Rules is concerned the petitioners can have no grievance. Following the aforesaid decision the like contentions of the present petitioner are also rejected.

6. However, the petitioner further contends that as per the impugned order dated 6.9.1995 the petitioner has been reverted from the post of Mamlatdar, which he was holding, to the post of Deputy Mamlatdar after the seniority list Annexure-A has come into existence the correctness of which cannot be disputed by respondent, while amongst the roster points allotted to Scheduled Castes, the petitioner stands at serial No. 524, Mr. M.G. Parmar at serial No. 530 roster point reserved for Scheduled Castes and is below the petitioner, has been retained on the post of Mamlatdar against the roster point reserved for Scheduled Castes. Reversion of petitioner to the post of Dy. Mamlatdar notwithstanding retaining Mr. M.G. Parmar junior to the petitioner, amounts to a hostile and arbitrary discrimination and denial of equal opportunity in the matter of employment violating the petitioner's fundamental rights of equality and equal opportunity guaranteed under Article 14 and 16 of the Constitution of India.

7. There is considerable force in the contention. From the reply affidavit a copy of which has been placed on record today, the fact that while reverting the petitioner from the post of Mamlatdar to Deputy Mamlatdar a person junior to him enlisted at serial No. 530 has been retained is not in dispute. The only justification which has been furnished in reply affidavit is that because that the person enlisted at serial No. 530 became eligible prior to the petitioner for promotion to the post of Mamlatdar, there is no ground for sustaining the plea of hostile discrimination of not affording equal opportunity of employment to the petitioner.

8. In this connection some further facts may be noticed. As per the seniority list Annexure-A undoubtedly the petitioner stands senior to Mr. M.G. Parmar who was enlisted at serial No. 530 roster point reserved for members of Scheduled Castes and inter se seniority amongst the persons enlisted in the seniority list on the post of Deputy Mamlatdar remains the same. So far as the eligibility for promotion to the next higher post of Mamlatdar is concerned, the facts are not in dispute that while the petitioner became eligible to be promoted in 1988 on passing the HRQ examination, the said M.G. Parmar became eligible for promotion much earlier to petitioner and as per the Rules. Said M.G. Parmar was eligible and considered for promotion by the Departmental Promotion Committee in 1987 as per the averments made in para 7 of the reply affidavit. Therefore, if the matter rested with considering promotion to the vacancy which occurred prior to 1988 the question of discrimination or not affording equal opportunity of employment would not arise inasmuch as there could not have been any question of considering the petitioner for promotion against vacancies which existed and against which promotions were to be considered prior to 1988 notwithstanding he being senior in the cadre of Deputy Mamlatdar. There is also not much difficulty that if promotion to the post of Mamlatdar is to be considered after the petitioner also became eligible in 1988 then as per the seniority list now finalised the petitioner is required to be promoted earlier to the said M.G. Parmar. However, the fact remains that some persons senior to both petitioner and Shri M.G. Parmar were not assigned at all, or properly, prior to preparation of final seniority list dated 9.3.1995 in pursuance of directions of this court referred to above. As a consequence of such directions, such senior persons were also required to be considered and promoted as Mamlatdar as per their seniority and be given deemed date of such promotion with effect from person junior to them were considered. The directions in this regard did not envisage to promote such senior persons from back date above irrespective of availability or non-availability of vacancies but it also envisaged reversion of some persons as a result of this exercise. Thus, promotions already made did not remain unaffected.

9. In that view of the matter, this position also becomes relevant while considering the case of reverting any person from the post of Mamlatdar to the post of Deputy Mamlatdar as a result of promotion being granted to certain persons as a result of final seniority list

dated 9.3.1995 on the ground that some of the persons whose names ought to have been included in the seniority list of Deputy Mamlatdar at their rightful place has earlier not been considered and were left out of consideration. Two fold directions were issued by this court while deciding Special Civil Applications Nos. 2224 of 1993 with 2213 of 1993 on 26.10.1994. One direction was that while fixing the final seniority there might be cases that a person ought to have been promoted earlier was left out. Correspondingly, there might be a person who should not have been promoted earlier has been promoted. In such cases, obvious way will be to give him deem date and also examine his case for giving benefits from retrospective date going back to the deemed date required to be given. The other direction was so far as the reversion is concerned, the person having worked on the post that aspect may not be necessarily gone into but, if reversion is required to be done that will be done strictly in accordance with the rules indicated in the order.

10. Obviously the court did not direct to consider the case of seniors left out for granting their due in the matter of promotion with effect from the date when any person junior to that have been promoted as per the final seniority list without affecting the promotion of juniors made earlier by creating supernumary posts for such additional promotions with effect from the deem date to be given to such senior persons now included in the seniority list but it did envisage that as a result of this exercise of giving promotion to the senior persons earlier left out may result in reversion of some persons who could not have been promoted for want of vacancy. The court has also not directed either to apply a straight jacket formula of reverting any person strictly in order of seniority list prepared in terms of the court's order in accordance with rules referred to by the court irrespective of any consideration of vacancy position and without considering claim to such vacancies of all eligible candidates at the point of time when vacancy was available to be filled. The fact that the court directed not only promotion of the senior left out to the higher post but also directed for giving them benefits from retrospective date by giving them due date of promotion import determination of year of vacancy against which such promotion is to be granted and the vacancies available in that year after such exercise for the simple reason that if by granting promotions to a person from back date resulted in filling in the vacancies of a particular year then the person junior to him promoted in that particular year could be retained

against vacancy of that year only if after promoting such senior with effect from back date any vacancy is left out for that year. At any rate it will have to be considered that if promotions have to be considered in accordance with seniority then when person junior to such person could, in fact, be considered for promotion to that post and it is with reference to that year the competing claims of the persons eligible for promotion against vacancy of such redetermined year in which the fate of person junior promoted in advance has to be considered for reversion vis-a-vis other senior persons. Taking the example of the case in hand where from the affidavit filed by the State it appears that on earlier occasion the claim of Mr. Parmar was considered against vacancy existing in 1987. Therefore, if any person senior to Mr. Parmar were now to be promoted against vacancies of 1987 or earlier year and that required reshuffling of the promotions and consequential reversion, the question would certainly will have to be gone into after filling in the vacancy by giving promotion to the senior candidate whether that junior person could still have been considered for promotion in that year and if not, then in which later vacancy he could have been considered. If there remains still any vacancy, the junior person like Mr. M.G. Parmar will not be affected. However, if no vacancy on the roster point is left in 1987 after promotion accorded to seniors, then obviously those juniors who could not have been considered then for want of vacancy, for working out the process of reversion, one will have to go to vacancies that occur subsequently and consider eligible candidates for such later vacancy as per seniority so that only junior most person, who cannot be accommodated against vacancy for which he has to make room for his eligible senior, faces reversion.

11. In case Mr. Parmar at serial No. 530 after filling in the vacancy of 1987 by seniors could not have been considered for want of vacancies then the exercise will have to be carried out for subsequent year only when vacancy is available. In the year in which the first vacancy is available the question of competing claim among eligible candidates in that year will arise for considering the question of promotion amongst persons eligible for then available roster point. In the present case if it could be said as a result of promotion given to senior persons still vacancy was there against which said M. G. Parmar could be considered for promotion before the present petitioner became eligible the present petitioner could not lay any claim on the anvil of Articles 14 and 16 of the Constitution in the matter of

reversion as a result of exercise carried out in pursuance of the order dated 26.10.1994 passed in Special Civil Application No. 2224 of 1994. He cannot claim any equality in the matter of promotion to the vacancy in the year in which he was not even eligible. However, if such consideration fell after the date when the petitioner became eligible obviously the competing claim of the petitioner as well as the person junior to him or any other person senior to him will have to be considered and then the junior-most person will pave way for the exercise contemplated by the said order. If in the year in which such junior could at all have been considered after giving effect to the final seniority list a person senior to him has not been considered or he has been reverted without considering this aspect it certainly results in denial of equal treatment in the matter of employment. The affidavit filed by the State does not disclose any such exercise having been undertaken except the fact that the petitioner was eligible much after the candidate at serial No. 530 and that he was considered in 1987. Obviously Mr. Parmar was considered when large number of person senior to him were left out for consideration whose claim has been considered only in pursuance of final seniority list published on 9.3.1995. Therefore consideration in 1987 by itself would not rule out the consideration of the petitioner now again when reversion is required to be made from amongst juniors promoted on account of earlier incomplete or irregular seniority.

12. As a result of the aforesaid discussion this petition is allowed. The impugned order dated 6.9.1995 reverting petitioner is quashed and set aside and the respondents are directed to reconsider the case of petitioner in the matter of reversion or retention in the post of Mamlatdar after giving promotion to the seniors who were left out earlier in light of the aforesaid observations. Accordingly, rule is made absolute as indicated above. No order as to costs.

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